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By ECF

Honorable Vernon S. Broderick
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: Barnes v. Block, et. al., No. 22-cv-7236 (VSB)(RWL)

Dear Judge Broderick,

On behalf of the Defendants Carson Block and Muddy Waters, LLC, we write in response to Plaintiff Kevin Barnes' March 30, 2023 letter regarding the Third Circuit's denial of Barnes' petition for review of the SEC's Final Order. Dkt. 32. Barnes' claims remain unripe because he has not yet fully exhausted his appellate rights, and in any event, no whistleblower award has been paid to or received by Mr. Block. Moreover, the Third Circuit's ruling has no bearing on the other arguments set forth in Defendants' motion to dismiss. For the reasons set forth therein, Plaintiff's Complaint should be dismissed.

First, under federal law, no whistleblower award can be distributed until Barnes has exhausted his appellate rights, including his right to seek rehearing, noted in his letter. Dkt. 32. Second, even if Barnes exhausts his appellate rights, which he has not, Mr. Block has not been enriched because he has not yet been paid and will not be paid imminently. Finally, and most importantly, the Third Circuit's determination does not save Plaintiff's Complaint in this action. The Complaint must be dismissed regardless of the status of payment or Barnes' whistleblower litigation in the Third Circuit because: (i) this Court lacks personal jurisdiction over Defendants, as they are not domiciled here and any contacts they had with New York are insufficient to establish personal jurisdiction; (ii) Plaintiff's fiduciary duty claim remains both untimely and implausible based on vague and conclusory allegations of an "oral partnership agreement;" (iii) New York is the wrong forum to litigate this case, as neither party is domiciled here and most facts underlying the actions occurred in other states; and (iv) a constructive trust claim does not lie where money damages are appropriate.

In short, the Third Circuit's recent ruling changes nothing. For all the reasons set forth in Defendants' motion to dismiss, the Court should dismiss Plaintiff's Complaint.

Respectfully Submitted,

/s/

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